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OFFICE OF THE
EXECUTIVE SECRETARY

July 16, 2002

VIA HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *Complaint of Michael Van Wies against CenturyTel of Ooltewah-Collegedale, Inc., TRA Docket No. 02-00058.*

Dear Mr. Waddell:

Enclosed please find an original and 13 copies of the Response to Motion to Compel submitted on behalf of CenturyTel of Ooltewah-Collegedale, Inc. for filing in the above-referenced docket. Also enclosed is an additional copy of the Response, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me.

Very truly yours,



Ross I. Booher

RIB/cw

Enclosures

cc: Mr. Michael Van Wies
Ms. Susan Smith

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**COMPLAINT OF MICHAEL VANWIES
AGAINST CENTURYTEL OF
OOLTEWAH-COLLEGEDALE, INC.**

Docket No. 02-00058

RESPONSE TO VAN WIES MOTION TO COMPEL

COMES NOW Century-Tel of Ooltewah-Collegedale, Inc. ("CenturyTel") and hereby responds to Michael Van Wies' ("Petitioner's") July 4, 2002 motion to compel (hereinafter "Motion") as follows:

Petitioner's Motion asks the Tennessee Regulatory Authority ("TRA") to compel CenturyTel to answer the Petitioner's latest untimely discovery requests, to "consult with the State of Tennessee's Attorney Generals Office" [*sic*] and to launch an "Independent Audit" of CenturyTel. Petitioner's Motion should be denied for each of the following reasons:

(1) Petitioner's Motion is Improper

The Petitioner's Motion improperly seeks to compel discovery that has not previously been sought. Pursuant to Rule 37.01 of the Tennessee Rules of Civil Procedure ("TRCP"), which are incorporated by TRA Rule 1220-1-2-.11, a motion to compel cannot be used to compel answers to discovery requests that have not been propounded in accordance with TRCP Rules 30, 31, 33 or 34. The Petitioner's Motion seeks to compel answers from CenturyTel to interrogatories and requests for admission that were not filed until July 5, 2002 -- nearly six weeks after the May 24, 2002 expiration of the deadline for the filing of discovery requests in this docket.

Furthermore, even if the discovery deadline had not expired, the Petitioner's Motion is improper because it failed to give CenturyTel proper notice of the sought discovery; the untimely discovery requests were not served on CenturyTel until the Motion had been filed. Accordingly, Petitioner could not provide a copy of CenturyTel's responses or objections to Petitioner's untimely discovery requests as required by TRA Rule 1200-1-1-.11(9).

Finally, Petitioner asks the TRA to "consult with the State of Tennessee's Attorney Generals Office" and to launch an "[i]ndependent audit" of CenturyTel's records. These requests are not forms of relief which may be sought in a motion to compel. Since the Petitioner's Motion is improper and all its requests are unauthorized, it should be denied.

(2) CenturyTel has already fully and completely responded to Petitioner's timely requests for discovery.

CenturyTel provided full and complete answers to each of Petitioner's Requests for Discovery on May 24, 2002. The Petitioner's Motion seeks to compel CenturyTel to answer a new set of discovery requests dated July 4, 2002. Since the deadline for all parties to file discovery expired at 2:00 PM on May 24, 2002, CenturyTel should not be required to respond to any discovery requests filed by the Petitioner after that date. As such, Petitioner's motion should be denied.

(3) Petitioner's Motion is based on false assumptions.

The Petitioner's improper motion to compel CenturyTel to answer new, untimely discovery requests is premised on the false assumption that TRA Rules require CenturyTel to maintain raw switch data long after its TRA Reports have been properly filed. In the Motion's cover letter, Petitioner states that "TRA Rule # 1220-4-2-.03(2) [] requires CenturyTel to maintain records for two years." In fact, TRA Rule 1220-4-2-.03 is the "Definitions" section of

the TRA Rule chapter entitled, "Regulations for Telephone Companies." "TRA Rule # 1220-4-2-.03(2)" (emphasis added) does not exist.

In the Motion, Petitioner claims, "TRA Rules # 1220-4-3-.03(2) requires CenturyTel to maintain [raw switch data] for two years." In fact, TRA Rule Chapter 1220-4-3 governs water companies, not telephone companies. "TRA Rule[] 1220-4-3.03(2)" (emphasis added) provides the definition of the word "utility" in this chapter: in short, any entity that provides water for the public. CenturyTel does not provide water services.

Finally, Petitioner claims, "TRA Rule # 1220-4-2-.20 provides for the **ENFORCEMENT PROVISION.**" In fact, TRA Rule 1220-4-2-.20 is entitled, "Grounded Circuits," and requires telephone companies to convert grounded telephone lines to non-grounded circuits.

Petitioner's false belief that CenturyTel has a duty to maintain raw switch data after required TRA Reports are filed could be based on his mistaken reliance on the TRA's Proposed Telephone Standard Rules. Not only are the Proposed Rules un-adopted drafts, but even if the draft rules governed CenturyTel's 2001 activities *ex post facto* they still would not apply in this case because even they do not require the long term retention of switch data.

CenturyTel's document retention obligations are governed by approved TRA Rules. TRA Rule 1220-4-2-.05 requires only that "records required by [TRA Rules] shall be preserved...." However, CenturyTel has found no TRA Rule that requires raw switch data to be preserved. The TRA's records preservation rules focus on customer billing information. Since CenturyTel has fully complied with TRA Rules and the Petitioner lacks any legal authority whatsoever for his untimely requests, Petitioner's Motion should be denied.

(4) The Purpose behind Petitioner's Motion is Improper.

Petitioner acknowledges that his purpose in filing the Motion is "to determine the circumstances of this willful violation of TRA Rules" regarding document preservation. The Petitioner's admission further confirms that his Motion is not substantially justified and is not intended to obtain discovery in support of his sole, remaining claim but instead to raise new issues in the hopes of fomenting collateral proceedings outside this docket. This is an abuse of this agency's process. Petitioner is attempting to use his Motion and this Agency's process as a tool in his own private crusade against CenturyTel. As discussed above, CenturyTel has not violated TRA Rules and the rules that the Petitioner claims that CenturyTel violated are either irrelevant or non-existent.

However, even if CenturyTel *had* violated TRA Rules regarding document preservation, the Petitioner has no authority to seek discovery on such matters in this docket. The Petitioner is not vested with any type of investigative authority. Like any citizen, the Petitioner may report suspected violations of state and federal laws to appropriate authorities. Those authorities have the legal knowledge and discretion to weed out baseless claims. The Petitioner should not be allowed to continue to use this Agency's process to financially burden CenturyTel with improper and baseless motions and other filings.

(5) Petitioner makes factual allegations that are irrelevant.

In his Motion, the Petitioner claims that data sought in his first and only timely-filed discovery request was not voluminous, that "[t]his type of data is normally stored on an electronic media" and that "CenturyTel's data could be stored on ONE CD-ROM." The Petitioner's speculation in his Motion about what is "normal" or what "could be" has no bearing on past events. CenturyTel has provided the Petitioner with full and complete answers to his

timely-filed discovery requests. Petitioner's misunderstanding of CenturyTel's equipment and processes and/or his preference for other processes or equipment is also not relevant to his sole remaining claim or to the legal basis for his motion.

Petitioner makes various additional factual claims in his cover letter that he elected not to include in his Motion. CenturyTel has limited this response to the factual allegations in the Motion itself, thereby minimizing the financial liability to which the Petitioner has exposed himself pursuant to TRCP 37.01(4). CenturyTel reserves the right to later respond to all allegations.

CONCLUSION

For each of the foregoing reasons, CenturyTel requests that the Petitioner's Motion be DENIED. Furthermore, CenturyTel requests that the Petitioner be required to pay the expenses of CenturyTel's response to the Motion, including attorney's fees, as required by TRCP 37.01(4).

Respectfully submitted,



R. Dale Grimes (#6223)

Ross I. Booher (#19304)

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*Counsel for CenturyTel of Ooltewah-
Collegedale, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss has been served via Certified United States mail, postage prepaid, on this the 16th day of July, 2002, upon Michael Van Wies, 8504 Horseshoe Bend Lane, Ooltewah, TN 37363-5627.

A handwritten signature in black ink, appearing to read "R. L. Z. L.", written over a horizontal line.